

99-011

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Honorable Jack Smith,
September 1, 1999

CONFIDENTIAL

William H. May, III, Counsel
Patton-Henry for Kentucky Committee
P.O. Box 964
Frankfort, Kentucky, 40602

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K.R.E.F.

Honorable Jack Smith, Chairman
Kentucky Registry of Election Finance
140 Walnut Street
Frankfort, Kentucky 40601

Dear Mr. Smith,

On January 25, 1999, the Patton-Henry for Kentucky Committee ("Committee") was established in conjunction with the filing of the Notification and Declaration of Paul E. Patton and Steve Henry for Nomination to the Offices of Governor and Lieutenant Governor. Also at this time, the slate filed its statement of intent to accept transfers from the election campaign fund and thereby subject itself to the campaign expenditure limitations established in KRS 121A.030.

On May 25, 1999, the Committee requested an advisory opinion from the Registry regarding whether the Committee could raise and spend in excess of the maximum threshold qualifying amount as provided in KRS 121A.060(1) up to but not exceeding the expenditure limitation provided in KRS 121A.030(1) in the event that the Republican nominees for Governor and Lieutenant Governor did not raise the minimum threshold qualifying amount as provided in KRS 121A.060(1). This request was supplemented by correspondence dated June 11, 1999.

In response to our request, the Registry issued Advisory Opinion 1999-008 on June 25, 1999. The Registry reasoned that the maximum threshold applied only to a "qualifying slate of candidates," which is defined in KRS 121A.010(5) as a "slate that has otherwise qualified under the chapter to receive a transfer from the election campaign fund." Since a slate does not qualify until an opposing slate exceeds the minimum threshold, the Registry determined that:

KRS 121A.060(1) does not prohibit a slate of candidates that is not eligible for transfers from the election campaign fund from exceeding the maximum threshold qualifying amount. Therefore, if no other slate of candidates in the 1999 general election raises the minimum threshold qualifying amount, KRS 121A.060(1) does not prohibit the Patton-Henry Committee from raising and spending funds that exceed the maximum threshold amount as established under KRS 121A.060(1), provided the Committee does not exceed the limit provided in KRS 121A.030(1).

In light of the Registry's position as advanced in Advisory Opinion 1999-008, the Committee hereby requests an opinion from the Registry as to the permissibility of the Patton-Henry Committee transferring any unused campaign funds to the Kentucky Democratic Party upon the satisfaction of all other obligations of the Committee.

KRS 121.180(10), states in part:

Except as provided in KRS 121A.080(6), any unexpended balance of funds not otherwise obligated for the payment of expenses incurred to further a political issue or the candidacy of a person shall, in whole or in part at the election of the candidate or committee, escheat to the State Treasury be returned pro rata to all contributors, or, in the case of a partisan candidate, be transferred to the State or County Executive Committee of the political party of which the candidate is a member ...

KRS 121.180(10) clearly permits a partisan candidate to transfer all excess funds at the end of his/her campaign to the State Executive Committee and the Patton-Henry for Kentucky Committee clearly involves a partisan slate of candidates.

KRS 121.180(10) cross-references and expressly excludes funds covered under KRS 121A.080(6) from its application. KRS 121A.080(6) states in pertinent part that:

The unexpended balance of contributions and fund transfers in a candidate campaign account of a slate of candidates which remains after all financial obligations of the particular election for which the account is established have been satisfied shall be forwarded to the registry for deposit in the fund when the account is closed. (emphasis supplied.)

It seems clear that the exception to KRS 121.180(10) set forth in KRS 121A.080(6) is limited to "qualifying slates of candidates" (as defined in Advisory Opinion 1999-008) who received "transfers from the fund." KRS 121A.080(1)-(15) sets forth the methodology of disbursing amounts from the fund, and subsection (6) provides that the unexpended balance is returned to "the fund." It would make no sense for a slate that did not receive monies from the fund to be required to transfer unexpended monies of contributors to the fund. That would amount to mandatorily escheating private funds to the state, which would raise serious constitutional questions.

Accordingly, if a slate does not become a "qualifying slate of candidates" because no opposing slate exceeds the minimum threshold, and the slate therefore does not receive any public money from the fund, the slate's unexpended balance is governed by KRS 121.180(10), not KRS 121A.080(6). Consequently, the slate has the option of refunding the balance pro rata to its contributors, permitting the balance to escheat to the state or transferring the balance to the State or County Executive Committee of a political party.

Therefore, if in the 1999 general election, the Republican and Reform slates of candidates for Governor and Lieutenant Governor do not raise the minimum threshold, the Patton-Henry slate

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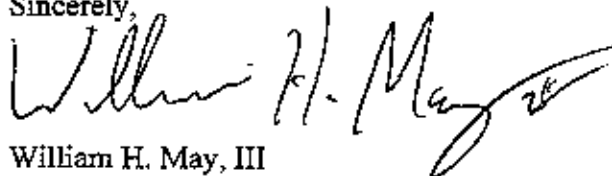
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never becomes a qualifying slate of candidates, is never eligible for transfers from the fund and never receives public money from the fund. It is the Committee's position that in such a circumstance any unexpended monies collected by the Committee from individual contributors up to the maximum expenditure limit set forth in KRS 121A.030(1) are not controlled by the Public Financing Campaign Act but rather are subject to the limitations provided in KRS 121.180(10) and consequently may be transferred to the Kentucky Democratic Party. Accordingly, we request that you issue an Advisory Opinion providing as follows:

In the 1999 General Election, the Patton-Henry for Kentucky Campaign Committee may accept contributions and make expenditures in excess of the maximum threshold qualifying amount set forth in KRS 121A.060(1) unless and until the slate of candidates receiving the Republican nomination for the office of Governor and Lieutenant Governor, or the Reform Party slate, receive contributions in excess of the minimum threshold qualifying amount set forth in KRS 121A.060(1). And so long as neither the Republican slate nor the Reform slate receives contributions in excess of the minimum threshold qualifying amount, the Patton-Henry Committee, not having become a qualifying slate under KRS 121A.010(5), and not having received any public money from the fund, may transfer any unexpended balance of funds not otherwise obligated for the payment of expenses incurred to the Kentucky State Democratic Party in accordance with KRS 121.180(10).

We look forward to receiving your Advisory Opinion as soon as possible. If you should have any questions or comments, please do not hesitate to contact me.

Sincerely,

A handwritten signature in dark ink, appearing to read "William H. May, III". The signature is fluid and cursive, with a long, sweeping underline that extends to the right.

William H. May, III